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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DEC 10 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Application by BellSouth Corp.,)
BellSouth Telecommunications, Inc.,) CC Docket No. 97-208
and BellSouth Long Distance, Inc.)
for Provision of In-Region, InterLATA)
Services in South Carolina)

**OPPOSITION OF THE ASSOCIATION FOR
LOCAL TELECOMMUNICATIONS SERVICES
TO BELL SOUTH'S MOTION TO STRIKE**

The Association for Local Telecommunications Services ("ALTS") hereby opposes BellSouth's Motion to Strike Portions of Reply Comments filed December 4, 1997, in this proceeding concerning the affidavit of DeltaCom attached to ALTS's reply comments.

ARGUMENT

BellSouth claims in its motion to strike that ALTS's Reply Comments include "totally different, contradictory facts" from those supplied in the initial ALTS comments. This is factually incorrect for the reasons shown below. Furthermore, BellSouth's failure to offer any factual or legal response to the challenged portion of ALTS' reply submission demonstrates there would be no prejudice to BellSouth from the inclusion of this material in reply comments even if BellSouth were correct that it should have been filed in the initial round. Finally, it was BellSouth's decision to file a plainly premature application -- a timing

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decision entirely within BellSouth's control -- that has forced commentators to offer predictions about the future rather than statements about the past.

I. DELTACOM'S REPLY AFFIDAVIT CLARIFIES FACTS ALREADY IN ISSUE.

In its initial comments, ALTS argued Track B is not available to BellSouth in South Carolina because at least one carrier exists that has sought interconnection with BellSouth, and has made reasonable steps towards providing both residential and business facilities-based service in competition with BellSouth. The Affidavit of Stephen Moses described the steps that have been taken by ITC DeltaCom and another company to prepare for the provision of these services.

In his confidential affidavit, Mr. Moses described both the facilities that DeltaCom has in place and plans to build in South Carolina, and the plans of the other company, with which it has a close business relationship. Mr. Moses' confidential affidavit indicated that residential service would be provided over facilities owned by both companies. Mr. Moses' affidavit concluded that "DeltaCom intends . . . to provide facilities-based residential and business local exchange services in South Carolina"

DeltaCom's comments thus clearly and correctly stated that

that there would be facilities-based competition for residential customers in South Carolina. The Department of Justice took note of DeltaCom's statement in its November 4, 1997, evaluation, but concluded: "because the present record on this critical issue is so sparse, the Department is unable to determine whether DeltaCom has submitted a 'qualifying request'" (at 11). DeltaCom responded to the Department's concerns by explaining that, while the company with which it has the business relationship will use DeltaCom facilities, the other entity will be the service provider and interface with residential customers.

The second affidavit thus sought to clarify the particular company that would interface with customers in response to DOJ's request for additional information. The facts relating to the manner in which service will be provided, the identify of the two entities involved in providing service, and the most crucial fact -- that there is a track A provider intending to and taking steps to provide facilities-based residential service in South Carolina -- remain the same. BellSouth is simply incorrect that there is any new or different information that would affect the Commission's decision as to whether a Track A carrier exists.

II. BELLSOUTH HAS NOT SHOWN HOW IT IS PREJUDICED BY THE INCLUSION OF DELTACOM'S AFFIDAVIT IN REPLY COMMENTS.

Even if BellSouth were correct that DeltaCom's reply

affidavit raises new material, BellSouth has not shown that it suffered any prejudice from the inclusion of this material in reply comments rather than initial comments. Indeed, BellSouth has neither challenged nor made any offer of proof in its motion concerning the basic facts relating to the steps being taken in South Carolina by facilities-based carriers to provide both residential and business local exchange service. There can be no prejudice to BellSouth when it has not challenged any of the factual information contained in either ALTS pleading relating to the attempts by DeltaCom and its business partner to provide facilities-based residential service in South Carolina.

III. IT WAS BELL SOUTH'S DECISION TO FILE A PLAINLY PREMATURE APPLICATION THAT NECESSITATES AN EVIDENTIARY FOCUS ON PREDICTIONS ABOUT THE FUTURE RATHER THAN HISTORICAL FACTS.

While ALTS firmly believes that its clarification of the status of facilities-based residential competition in South Carolina is neither new nor substantively different information, and that the Commission should therefore reject the BellSouth motion to strike, the need for any party to use its reply comments to update or elaborate any predictions about the future that were made in initial comments is the inevitable consequence of BellSouth's own decision to file a premature application.

BellSouth claims in its application that no Track A competitor is emerging in South Carolina, but this overlooks the

efforts of DeltaCom, and the delays imposed on DeltaCom by BellSouth. It took DeltaCom six months from its initial request to obtain a collocation agreement, and that agreement has not yet been implemented because the agreement gives BellSouth 60 days to respond to a request, and five to eleven months to implement any request.

If BellSouth really wanted to deal in competitive facts and avoid any need to juggle prognostications, all it has to do is implement DeltaCom's request promptly, gather the relevant factual information, and then rely on that factual information in its application.¹ BellSouth is the entity that controls the timing and the completeness of the application.

When an RBOC chooses to file for interLATA authority prior to completing its obligations to potential Track A competitors, it cannot complain if commenting entities are forced to update predictions over time, or elaborate upon issues in their responsive pleading, particularly when the Department of Justice raises pertinent questions in its evaluation. As the Commission pointed out in its Ameritech Michigan 271 Order (at ¶ 56): "We find that enforcing our requirement that all BOC applications be

¹ In addition, as explained in a number of the comments, BellSouth filed its application without sufficient historical data on the Operational Support Systems that it now claims satisfies the Section 271 checklist requirements.


factually complete when filed is fair and does not pose an undue hardship to the BOC."

CONCLUSION

For the foregoing reasons ALTS requests that the Commission deny BellSouth's Motion to strike.

Respectfully submitted,

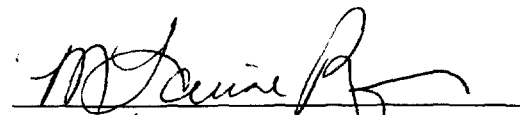
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December 10, 1997

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Opposition of the Association for Local Telecommunications Services was served December 10, 1997, on the following persons by first-class mail, or hand service, as indicted.


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